IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

First Appeal No. 616 of 2001
(Old No. 313/1978)

The Collector, Almora … Appellant.

Vs.

1. Sri Raja Harish Chandra Raj Singh
of Kashipur, District Nainital (Deceased)
1/1. Sri K.C. Singh "Baba" R/o Mohalla Katoratal,
Cantonment Kashipur, District U.S. Nagar.
2. Ramesh Datt S/o Ram Datt, R/o Raja Udyan Saimdeo,
Patti Darun, District Almora.
2/1. Nagesh Chandra S/o Ramesh Dutt,
2/2. Harish Chandra S/o Ramesh Datt,
2/3. Dinesh Chandra S/o Ramesh Datt
All R/o Vkllage Kana, Post Jhakarsaim,
District Almora …… Respondents.

Sri R.C. Arya, learned Standing Counsel for the appellant.
Ms. Saneeta Miyan, holding brief for Sri V.K. Bisht, learned Counsel for the respondent No.1.
Sri Ramji Srivastava, learned counsel for the respondent No.2.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/s 54 of the Land Acquisition Act read with Section 96 C.P.C., has been preferred by the appellant, aginst the judgment and decree dated 3-12-1977, passed by the District Judge, Almora, in Misc. Land Acquisition Case No. 11 of 1967 (A), Raja Harish Chandra Raj Singh Vs. Ramesh Datt and another.

2- Brief facts of the case are that late Raja Anand Singh had some immovable properties including a garden with a bungalow and out-houses at Saimdeo, Patti Darun, District Almora. He had no issue. He was man of religious temperament. He, therefore, made a bequest of all his properties through his will made in four parts. The fourth part of his bequest is dated 17-3-1938 which was brought into existence just eight days before his death. Through this last part of the will, the Raja appointed Pandit Murlidhar Pant, Smt. Saraswati Devi, Smt. Sundari Devi, Smt. Lali Devi and Pandit Ramesh Datt Pant as the executors of the will. Pt. Ramesh Datt Pant, O.P. No.1 was also appointed as manager to administer the trust property with the right to sell or mortgage the same for its benefit. By the will on the whole the

testator dedicated his immovable properties substantially to the temples of Jageshwar, Jagdamba in Almora and Kalika in district Bijnor. Some portion of the income of the trust property was also bequeathed to his servants and their sons and to his priest Ram Datt Pant and his son Pt. Ramesh Datt Pant. The first part of the will dated August 15, 1934 placed the trust property under the control and supervision of the Deputy Commissioner Almora who was required to manage and supervise it by an officer not below the rank of a Tehsildar. The income after being spent as desired by the testator in the will was to be deposited in the Imperial Bank by the Deputy Commissioner after making payments of the debts of late Raja Anand Singh, the testator, between Rs. 30,000/- and 40,000/-. Some expenditure for a charitable dispensary and teaching Sanskrit was also provided for. The amount to be paid to his servants and priest aforesaid and their wards had also been separately specified in the will. By the last part of the will the aforesaid five beneficiaries were appointed who were also to execute the will. O.P. Ramesh Datt Pant was appointed as manager. After the death of Raja Anand Singh in the 1938, the aforesaid five beneficiaries and executors applied for probate of the will in the court of the District Judge Kumaon.

3- The claim was contested by court of Wards Bijnor on behalf of Raj Kumar Hari Chand Raj Singh of Kashipur, the petitioner in this case. The objection of the petitioner was not sustained and the District Judge by his order dated 18.10.1939 allowed the application of the aforesaid five executors for grant of probate. The petitioner went in appeal and his appeal was dismissed by the Allahabad High Court on 17-9-1943. Thereafter probate certificate was issued in favour of the five executors by the District Judge Kumaon on 24.6.1944. In this way Pt. Murlidhar Pant, Smt. Saraswati Devi, Smt. Sundari Devi, Smt. Lali Devi and Pt. Ramesh Datt Pant became the probrate holders of the will. All these persons, except Ramesh Datt Pant, had passed away by the year 1964.

4- In the year 1963, the Land Acquisition Officer started proceedings to acquire 67.2382 acres of land for Government Seed

Multiplication Farm Patoriya (Kanda), Patti Darun out of the Saimdeo Garden trust property covered by the aforesaid will dedicated to Temple Jageshwar. Award was passed on 30-11-1965 in L.A.C. Case No. 39 of 1963 for a compensation of Rs. 40,898=74 together with interest. The petitioner Harichand Raj Singh filed objection U/S 18 of the Land Acquisition Act for not making the payment of the said compensation to Pt. Ramesh Datt Pant, O.P. No.1, as according to him, Ramesh Datt Pant was not a legatee under the will and as a case was already pending in the court of the District Judge for determination about the real trustee as the last legatee Murlidhar Pant had passed away in the year 1964. The O.P. Ramesh Datt Pant resented the objection filed by the petitioner on the ground that he was one of the five trustees and executors of the will in whose favour probate has been granted long back by the competent court after contest. He also alleged that he is the only surviving person holding the probate and as such he is alone entitled to get the said compensation. The land Acquisition Officer made a reference U/S 30 Land Acquision Act referring this dispute to District Judge Almora. During the pendency of the reference the Collector Almora also applied for his impleadment as party to the reference and he was arrayed as O.P.No.2. The claim of the Collector was that the first part of the will dated 15th August, 1934, which is a part and parcel of the will as a whole, has been entrusted to him with the over all control and supervision of the entire trust property covered by the said will and, therefore, the compensation should go to him.

5- On the averments of the parties, the following issues were framed by the learned District Judge in reference case:-

1. Whether the O.P. is the sole surviving executor under the will executed by Kunwar Anand Singh and as such entitled to get the entire compensation?.
2- Whether there is any trust in respect of the acquired property and therefore the compensation should be given over to this trust?.
3- Has the applicant any interest in the property?.

4- To what relief, if any, is the applicant entitled?

5- Whether the trust alleged by the Zila Adhikari Almora is under his control and supervision?. If so, whether Zila Adhikari alone is entitled to receive the amount of compensation?.

6- The reference Court on perusing the evidence on record and hearing the rival contentions of the parties came to the conclusion that the O.P. Ramesh Datt the surviving executor of the will, in whose favour probate was issued, is the only person to receive the compensation.

7- Feeling aggrieved by the findings recorded by the Reference Court, the Collector has filed this appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- Heard learned counsel for the parties and perused the record.

7- The learned Standing Counsel, appearing on behalf of the appellant has submitted that the main will which creates the Trust only empowers the Deputy Commissioner, Almora to receive the income accrued and supervise the Trust and the appellant was entitled to receive the compensation of the acquired property of the Trust and the District Judge wrongly interpreted the fourth addition of the will. It was also contended that the respondent Ramesh Datt being one the paid servants of the Trust created by the Deed of Will, cannot be a Trustee nor entitled to the custody of the money of the said Trust according to the provisions of the Trust Act and, therefore, the respondent is not entitled to receive the compensation amount.

8- I do not find any force in the submissions raised by the learned Standing Counsel.

9- Perusal of different parts of the will executed at different times, shows that in the first part of the will dated 15th August 1934, the testator had placed the trust properties including the one under

reference in the overall control and supervision of the Deputy Commissioner Almora for the proper management, upkeep and improvement. The income, after meeting the expenses as detailed out in the will, were to be deposited in the Imperial Bank by the Deputy Commissioner Almora. The said control and management was to be looked after by the Deputy Commissioner or an Officer on his behalf not below the rank of a Tahsildar. The Collector has placed reliance upon this part of the will of claiming an interest in the trust property, as according to him, the said part of the will was not overridden by the last part of the will by which respondent Rajesh Datt, besides four others were appointed as executors to lookafter, control and supervise the trust properties and Ramesh Datt was also appointed as manager with rights to mortgage and sell the trust properties for the benefit of the estate. According to the respondent Ramesh Datt the last part of the will, which is the final desire of the testator, should prevail over the first part. The settled law regarding the interpretation of the will is the if there is some contradictions, inconsistency or variance between the previous and subsequent parts of the will, the subsequent part will prevail as this indicates the last desire of the testator. The testator had died after eight days of the execution of last part of the will. The perusal of this part of the will shows that the O.P. Ramesh Datt besides the other four other persons were appointed the trustees and executors. Further Ramesh Datt was also authorized to act as manager of the trust properties. Therefore, whatever authority was given by the testator to the Deputy Commissioner Almora through the first part of the will, was taken away by the last part of the will as the trustees and executors of the will together with manager of the trust properties were specifically spelt out by the testator.

10- Further, under Section 3(b) of the Land Acquisition Act, only persons interested in the property can prefer claim to the compensation and in the instant case Ramesh Datt, can safely be said the interest person.

11- Again under Section 211, Indian Succession Act, only an executor or administrtor of a deceased person can be his legal

representative for all purposes and all the property of the deceased person vest in him as such. Section 213 of the said Act lays down that no person except an executor or a lagatee can be allowed to establish a right in any court of law to the property under the trust unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed or has granted letter of administration with will or with a copy of authenticated copy of the will annexed. Further Section 216 of the said Act provides that a guarantee of probate or administration alone can sue and no one else in respect to the trust property in question. Section 226 provides that in case of death of any of the executors in whose favour probate has been granted, the entire representation of the testator accrues to the surviving executor or executors.

12- In view of the aforesaid discussion I am in full agreement with the findings recorded by the learned District Judge, holding that the opposite party Ramesh Datt Pant was the sole surviving executor under the will executed by Kunwar Anand Singh and as such he was entitled to get the entire compensation amount and the O.P. Zila Adhikari Almora has absolutely no interest in the trust property under reference and as such is not entitled to the compensation amount in question and I do not find any illegality and infirmity in it.

13- The appeal lack merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and order dated 3-12-1977, is hereby confirmed. No order as to costs.

15- The interim stay, if any, stands vacated.

(B.C. Kandpal, J.)

Dated: 2-12-06

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